

TITLE 38: FINANCIAL INSTITUTIONS
CHAPTER I: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

PART 170
CONSUMER LEGAL FUNDING ACT

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AUTHORITY: Implementing and authorized by the Consumer Legal Funding Act [815 ILCS 121].

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SUBPART A: GENERAL PROVISIONS

Section 170.10 Purposes and Construction

This Part is intended to carry out the purposes of the Consumer Legal Funding Act. These rules shall be liberally construed to effectuate the purposes of the Act.

Section 170.20 Definitions

For purposes of this Part, the following definitions apply:

“Act” means the Consumer Legal Funding Act [815 ILCS 121].

“Advertise” means publishing or disseminating any written, electronic, or printed communication, or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a consumer legal funding.

“Applicant” means a person or entity applying for a license pursuant to the Act.

“Cancellation Date” means the Resolution Date or if there is no Resolution Date, the date the licensee determines the consumer is not required to repay the company the consumer legal funding amount or charges.

“Charges” means the fees, as set forth in Section 25 of the Act, to be paid to the consumer legal funding company by or on behalf of the consumer above the funded amount provided by or on behalf of the company to an Illinois consumer pursuant to the Act.

“Consumer” means a natural person who has a pending legal claim and who resides or is domiciled in Illinois.

“Consumer legal funding” or “funding” means a nonrecourse transaction in which a company purchases and a consumer transfers to the company an unvested, contingent future interest in the potential net proceeds of a settlement or judgment

obtained from the consumer's legal claim; if no proceeds are obtained from the consumer's legal claim, the consumer is not required to repay the company the consumer legal funding amount or charges.

"Consumer legal funding company" or "company" means: a person or entity that enters into, purchases, or services a consumer legal funding transaction with an Illinois consumer.

"Consumer legal funding company" does not include:

an immediate family member of the consumer;

a bank, lender, financing entity, or other special purpose entity:

that provides financing to a consumer legal funding company; or

to which a consumer legal funding company grants a security interest or transfers any rights or interest in a consumer legal funding; or

an attorney or accountant who provides services to a consumer.

"Controlling person" means

a person, entity, or ultimate equitable owner that owns or controls, directly or indirectly, 10% or more of any class of stock of the licensee or applicant;

a person, entity, or ultimate equitable owner that is not a depository institution, as defined in Section 1007.50 of the Savings Bank Act, that lends, provides, or infuses, directly or indirectly, in any way, funds to or into a licensee or applicant in an amount equal to or more than 10% of the license applicant's net worth;

a person, entity, or ultimate equitable owner that controls, directly or indirectly, the election of 25% or more of the members of the board of directors of a licensee or applicant; or

a person, entity, or ultimate equitable owner that the Secretary finds influences management of the license or applicant, the provisions of this subpart shall not apply to a public official serving on the board of directors of a State guaranty agency.

"Department" means the Department of Financial and Professional Regulation.

“Director” means the Director of the Department of Financial and Professional Regulation – Division of Financial Institutions or the Director’s designee.

“Division” means the Department of Financial and Professional Regulation – Division of Financial Institutions.

“Funded amount” means the amount of moneys provided to, or on behalf of, the consumer in the consumer legal funding. “Funded amount” does not include charges except for charges that are deducted from the funded amount.

“Funding date” means the date on which the funded amount is transferred to the consumer by the consumer legal funding company either by personal delivery; via wire, ACH, or other electronic means; or mailed by insured, certified, or registered United States mail.

“Immediate family member” means a parent; sibling; child by blood, adoption, or marriage; spouse; grandparent; or grandchild.

“Licensee” means a person, partnership, association, limited liability company, corporation or other legal entity licensed under the Act. Any person or entity who holds himself, herself, or itself out as a licensee or who is accused of unlicensed practice is considered a licensee for purposes of enforcement, investigation, hearings, and the Illinois Administrative Procedure Act [5 ILCS 100].

“Net Proceeds” means the amount of proceeds of the consumer’s legal claim remaining after all liens of a higher priority on the consumer’s legal claim than the funding are paid.

“Other Business Authorization” means the authorization in writing as required by Section 105 of the Act to conduct another business in a location licensed under the Act.

“Resolution amount” means the funded amount plus the agreed-upon charges that are delivered to the consumer legal funding company on the resolution date.

“Resolution date” means the date the resolution amount is delivered to the consumer legal funding company.

“Secretary” means the Secretary of Financial and Professional Regulation or the Secretary’s designee.

Section 170.30 Administration and Enforcement of the Act

The Director and Division shall administer and enforce the Act. The provisions of the Financial Institutions Code [20 ILCS 1205] shall apply to licensees, applicants, and any activity covered by the Act.

Section 170.40 Minimum Requirements for Office Records

- a) Every licensee shall keep the following records at the licensed location in any medium or format, including electronic, that accurately reproduces original documents, records, or papers:
 - 1) Register of all consumer legal fundings.
 - 2) Individual account records.
 - 3) File of all original papers.
 - 4) Cash book if the licensee uses cash.
 - 5) Alphabetical record of all consumers entering consumer legal fundings.
- b) Records for fundings made under the Act shall be kept separate or readily identifiable from other types of business conducted in the office.
- c) A licensee shall maintain a ledger of all commissions, referral fees, rebates, or any other forms of consideration paid to the licensee by any person or entity other than charges received from a consumer.
- d) A licensee shall maintain a ledger of all commissions, referral fees, rebates, or any other forms of consideration paid to another person or entity other than its own employees or profits distributed to owners.
- e) Electronic data processing, combination forms and special office systems may be used if in accordance with standard accounting procedures and if they contain the information enumerated in subsection (a).

Section 170.50 Individual Account Record

- a) An individual account record shall be kept for each consumer who has a funding with the licensee. Such account record shall show the name and address of the consumer(s), account number, funding date, funding amount, resolution date (if applicable), resolution amount (if applicable), cancellation date (if applicable), and document preparation fee charged (if applicable).

- b) Each funding shall have a unique account number.
- c) Every licensee shall preserve the records of all fundings including the individual account record, for at least three years after making the final entry for such funding.
- d) All legal instruments taken in connection with a funding and executed by a consumer including all disclosure statements shall bear the consumer's account number and the name and address of the licensee.
- e) All legal instruments taken in connection with a funding and executed by a consumer including all disclosure statements must be provided in English and in the language in which the funding was negotiated.

Section 170.60 Payments

- a) All payments shall be credited on the individual account record as of the date received and a written receipt shall be provided to the consumer and the consumer's attorney.
- b) The receipt shall be provided to the consumer and consumer's attorney in any manner authorized by the consumer in in the consumer legal funding contract or in a later agreement. The licensee shall not be required to provide receipt to the consumer's attorney if the consumer is not represented by an attorney on the date the payment is received by the licensee.

Section 170.70 Determination of Payment

- a) Each licensee shall establish a reasonable written policy for making the determination that it will accept an amount lesser than the schedule resolution amount in full resolution of the funding and how the licensee will determine any such lesser amount. A licensee shall follow its written policy.
- b) Each licensee shall establish a reasonable written policy for making the determination that no net proceeds are available from the legal claim and the consumer does not owe the licensee any of the funded amount or any charges otherwise due pursuant to the agreement. The written policy shall also include a process for making the determination that the consumer or consumer's attorney has committed fraud against the licensee. The written policy shall include procedures for providing notification to the consumer and the consumer's attorney. A licensee shall follow its written policy.

- c) Each licensee shall provide a copy of the written policies described in this Section to the Department annually at renewal and at the time of any substantive updates.
- d) A licensee shall notify the consumer and the consumer's attorney within three calendar days of determining that the licensee will accept an amount lesser than the scheduled satisfaction amount in full resolution of the funding. The licensee shall not be required to provide the notice to the consumer's attorney if the consumer is not represented by an attorney on the date the notice is provided. The licensee's notice to the consumer and attorney shall include the scheduled resolution amount, the amount the licensee will accept, the due date of the payment, and a statement that receipt of the payment will fully satisfy the funding. If the licensee receives the agreed upon amount identified in the notice on or before the due date, it must accept the amount identified in full satisfaction of the funding.

Section 170.71 Permanent File

Each licensee must maintain a permanent file which includes the following:

- a) A copy of all correspondence sent to or received from the Department within the past 24 months.
- b) A copy of the last two examination exception reports and any related correspondence.
- c) A copy of all complaints received from consumers or consumers' attorneys and the resolution of all such complaints.

Section 170.80 Return of Documents

All legal instruments taken in connection with a funding and executed by a consumer shall be returned to the consumer, physically or electronically, promptly following the resolution date or the satisfaction date. To satisfy the requirements of this Section, a licensee may substitute copies reproduced from any medium or format which accurately reproduces the original documents. Any executed copy of any legal instrument taken in connection with a funding retained by the licensee must be clearly marked "PAID" or "FULLY SATISFIED".

Section 170.90 Advertising

- a) Licensees shall not make reference, in any form of marketing or advertising, to "Low rates", or "Lower rates", or "Lowest rates", or "Lowest cost", or indicate by direct or indirect means through such expression as "Low cost", "Lower cost", or "Easier to repay". Licensees shall not make reference or imply, by any device,

that the charges for a funding are low.

- b) Licensees may advertise “New reduced rates” or “Reduced rates”, or similar phrases for not more than 60 days after the effective date of the reduction in rates.
- c) Upon request by the Department, licensees shall forward to the Department all advertising.
- d) A licensee may indicate in advertising and otherwise that its business is “licensed” by the State of Illinois. A licensee may not advertise in a *false, misleading or deceptive manner* or imply or indicate that the rates or charges for fundings made are “approved”, “set” or “established” by the Department, Division, or State of Illinois.
- e) On a finding that an advertisement is false, misleading, or deceptive, the Secretary may issue a cease and desist order or any other order permitted by the Act.
- f) The rules in this Section only apply to activity regulated pursuant to the Act.

Section 170.100 Other Business

Unless otherwise authorized by the Act, no other business may be conducted at the licensed location unless authorized in writing by the Secretary. The Secretary’s authorization will be predicated upon the licensee’s agreeing:

- a) That the authorization will neither conceal nor facilitate concealment of an evasion of the Act;
- b) To comply with all federal, State, and local laws;
- c) To obtain any license or registration required by a federal, State or local government agency to engage in the other business authorized;
- d) That the Department may examine all records and investigate any or all transactions of the licensee;
- e) The Secretary retains the right, upon notice and opportunity to be heard, to alter, amend or revoke any other business authorization;
- f) That if any law enacted after the authorization prohibits the activity, the authorization shall become null and void immediately;
- g) To pay the Department a nonrefundable Other Business Authorization Request

fee of \$500 at the time of making the request for the authorization; and

- h) To pay the Department the sum of \$100 as a renewal fee for each Other Business Authorization at the time of renewing the annual license.

Section 170.110 Examinations

The Department may examine all licensees from time to time pursuant to Section 115 of the Act. The Department may examine a licensee at any time, with or without notice.

Section 170.120 Relocation

Whenever a licensee desires to change the licensed place of business to a location other than that set forth in the license and the licensee shall provide the Department with the following at least ten days prior to the relocation:

- a) A relocation fee of \$50;
- b) A written notice providing the complete address of the new location;
- c) Photographs of both the exterior and interior of the new location; and
- d) A written sworn statement that the new location will not share the premises with another business.

Section 170.130 Name Change

Whenever the licensee desires to amend the name of the licensed business, including the addition of an Other Trade Name (DBA), the licensee shall submit to the Department, within 15 days after amending the name, a change of name fee of \$50, the amended Articles of Incorporation, if the licensee is a corporation or amended organization papers, if the licensee is an entity other than a corporation.

Section 170.140 Verification of Resolution Amount

- a) Upon written request by either the consumer or the consumer's attorney, the licensee shall provide in writing the resolution amount due as of the date of the response no later than three business days after receiving the request.
- b) The written statement shall clearly and conspicuously state that the resolution amount may only be paid from the net proceeds of a settlement or judgment obtained from the consumer's legal claim and that if no proceeds are obtained from the consumer's legal claim, the consumer is not required to repay the

company the consumer legal funding amount or charges.

- c) Upon written request by either the consumer or the consumer's attorney, the licensee shall provide a copy of the original funding contract and any subsequent amendments no later than three business days after receiving the request.

Section 170.150 Off-Site Records

With the Secretary's prior written approval, the licensee may retain physical records at a location other than the licensed location. Prior approval is not required to maintain records in an electronic processing system at any location. To retain physical records at a location other than the licensed location, the licensee shall make a written request that shall include the following:

- a) Address of off-site location;
- b) Contact person, email address, and telephone number for the off-site location;
- c) Statement that all books, records, and account information shall be made available within 72 hours after the Secretary's request at either the licensed location, the off-site location or electronically;
- d) At the Secretary's discretion, the examination may be conducted at either the licensed location, the off-site location, or remotely; and
- e) The licensee will pay for all examination expenses.

Section 170.160 Servicing of Accounts by Contract

Upon prior approval of the Secretary, the licensee may contract for servicing of accounts. A request for the Secretary's approval shall be in writing and include the name, address, and contact information for the proposed servicer.

Section 170.170 Transfer of Funding Contracts

A licensee shall notify the Department no more than 30 days after pledging, hypothecating, selling, or otherwise conveying any interest in a consumer legal funding contract, in whole or in part.

Section 170.180 Revocation or Suspension of License

If it is determined that the Secretary had the authority to issue the suspension or revocation of a license pursuant to Section 135 of the Act, the Secretary may issue orders reasonably necessary to correct, eliminate, or remedy the violations and/or harms.

Section 170.190 Office Hours

Each licensee shall maintain a website, email address, or telephone service. The website, email address, or telephone service shall, at a minimum, provide consumers with capabilities reasonably adequate for efficiently handling communications, questions, and other matters relating to an existing consumer legal funding. In determining whether the website and telephone service are provided in a reasonably adequate manner, the Secretary may consider consumer complaints received regarding the licensee and information obtained from examinations or investigations conducted and reports filed pursuant to the Act.

Section 170.200 Financial Coaching Disclosure

Each consumer legal funding contract shall include a separate disclosure page entitled “FINANCIAL COACHING INFORMATION” which will provide the consumer with information on accessing a financial coaching program. The disclosure shall be signed by the consumer and the disclosure shall be maintained as part of the individual account record.

SUBPART B: DISCLOSURE OF CONFIDENTIAL SUPERVISORY INFORMATION

Section 170.310 Purpose and Scope

- a) Purpose. The purpose of this Subpart is to establish the procedures and standard by which the Secretary shall determine whether to disclose confidential supervisory information in response to a request for discovery or disclosure of such information.
- b) Scope. This part applies to requests, whether by subpoena, order, or other judicial or administrative process, for discovery or disclosure of confidential supervisory information prepared or obtained by the Secretary under the Act. This Subpart does not apply to:
 - 1) a request made pursuant to the Freedom of Information Act [5 ILCS 140] (FOIA), provided that, if the information requested constitutes confidential supervisory information, it shall nonetheless be exempt from disclosure; or
 - 2) a request made by a party to whom the Secretary may furnish confidential supervisory information pursuant to the Act.

Section 170.320 Definitions

For purposes of this Subpart:

“Compelling need” means that no other non-confidential source is available to obtain information of equal relevance.

“Complete request” means a request that provides all of the information required in Section 170.330 of this Subpart.

“Confidential supervisory information” shall mean any report of examination, visitation, or investigation prepared by the Secretary under the Act, any report of examination visitation, or investigation prepared by the state regulatory authority or another state that examines a licensee, any document or record prepared or obtained in connection with or relation to any examination, visitation, or investigation, and any record prepared or obtained by the Secretary to the extent that the record summarizes or contains information derived from any report, document, or record described in this subsection. “Confidential supervisory information” does not include any information or record routinely prepared by a licensee and maintained in the ordinary course of business or any information or record that is required to be made publicly available pursuant to State or federal law or rule.

“Person” or “persons” means individuals and bodies politic and corporate, including without limitation corporations, limited liability companies, general partnerships, limited partnerships and joint ventures; unless, from the context and facts, the intentions plainly apply only to individuals. Persons who reside in or live in a geographical area include non-natural persons located within the geographical area.

“Relevant” means the requests confidential supervisory information could substantially contribute to the resolution of the issues identified in the pleadings contained within the request.

“Requester” means any person who makes a request for the discovery or disclosure of confidential supervisory information, whether by subpoena, order, or other judicial or administrative process.

Section 170.330 Requests for Confidential Supervisory Information

A request for confidential supervisory information whether by subpoena, order, or other judicial or administrative process, shall be made to the Secretary. If the request is for a record, the requester must adequately describe the records sought by type and date. Such request shall be accompanied by:

- a) A copy of the formal complaint or pleading setting forth the assertions of the adversarial matter;

- b) The caption and docket number assigned to the proceeding, if any;
- c) The name, address, telephone number, and email of designated legal counsel to each party to the proceeding;
- d) A statement detailing the relevance of the requested confidential supervisory information;
- e) A statement detailing a compelling need for the requested confidential supervisory information;
- f) A statement describing any prior judicial decisions or pending motions in the case that may bear on the asserted relevance of the requested information; and
- g) A statement detailing why the requester believes that disclosure is required for the benefit of consumers in this State.

Section 170.340 Where to Submit a Request

A person requesting discovery or disclosure of confidential supervisory information under this Part shall mail or hand deliver the request to:

Illinois Department of Financial and Profession Regulation – Division of Financial
Institutions Attn: Consumer Credit Supervisor and Deputy General Counsel of the
Division of Financial Institutions
555 West Monroe Street, 5th Floor
Chicago, IL 60661

AND shall email the request to:

FPR. DFI.Director@Illinois.gov and FPR.consumercredit@Illinois.gov.

Section 170.350 Consideration of Requests

- a) Standards for the Disclosure of Confidential Supervisory Information. When making a determination with respect to the disclosure of confidential supervisory information, the Secretary shall consider the following standards:
 - 1) the confidential supervisory information identified in the request is relevant;
 - 2) A compelling need exists;

- 3) If the requested confidential supervisory information is to be used in connection with an adversarial matter, whether the lawsuit or administrative action has been filed;
 - 4) The production and disclosure of the confidential supervisory information is not unduly burdensome to the Department; and
 - 5) Whether disclosure will benefit consumers.
- b) In determining whether to disclose the requested confidential supervisory information, the Secretary may inquire into the circumstances of any case underlying the request and rely on sources of information other than the requester, including other parties.
- c) **Time Required by the Secretary to Respond.** The Secretary, within 30 days, shall determine whether to disclose the requested confidential supervisory information. The 30-day time period shall not commence until the Secretary receives a complete request which complies with the requirements set forth in Section 170.330. If the request is not complete, the Secretary shall notify the requester of the required information that has not been previously provided.
- d) **Notice to Other Parties.** Following receipt of a complete request for confidential supervisory information, the Secretary may notify the person that is the subject of the requested information, unless the Secretary determines that doing so would advantage or prejudice any of the parties in the matter at issue.

Section 170.360 Disclosure of Confidential Supervisory Information

- a) **Conditions and Limitations.** The Secretary may impose any conditions and limitations on the disclosure of confidential supervisory information that are necessary to protect the confidentiality of such information. Except as authorized by the Secretary, no person obtaining access, whether physically or electronically, to confidential supervisory information under this Subpart may further disseminate the confidential supervisory information.
- b) **Restrictions on Dissemination of Confidential Supervisory Information.** The Secretary may condition a decision to disclose confidential supervisory information on entry of a protective order by the court or administrative tribunal presiding in the particular case or on a written agreement of confidentiality. In a case in which a protective order or agreement has already been entered between parties other than the Secretary, the Secretary may nevertheless condition approval for release of confidential supervisory information upon the inclusion of

additional or amended provisions in the protective order. The Secretary may authorize a party who obtained the records for use in one case to provide them to another case, subject to any conditions that the Secretary may impose on either or both parties.

- c) Notification of Parties and Procedures for Sharing and Using Confidential Supervisory Information in Litigation. The requester shall promptly notify other parties to a case of the release of confidential supervisory information obtained pursuant to this Subpart and, upon entry of a protective order, shall provide copies of confidential supervisory information to the other parties.

Section 170.370 Retrieval and Destruction of Previously Disclosed Confidential Supervisory Information Used in Litigation

- a) The requester, and each party who may have subsequently received confidential supervisory information pursuant to a protective order, shall destroy, permanently erase or otherwise make permanently inaccessible the disclosed confidential supervisory information covered by the protective order; and
- b) Each party shall certify to the Secretary that the disclosed confidential supervisory information covered by the protective order has been destroyed, permanently erased or made permanently inaccessible.

Section 170.380 Fees for Services

The Secretary may charge the following fees for any record search or copying performed by the Secretary in connection with a request for confidential supervisory information:

- a) Reproduction costs incurred in making copies including electronic or digital copies of documents shall be reimbursed at \$1.00 per page.
- b) All other costs incurred in searching for and transporting data pursuant to a request for confidential supervisory information shall be reimbursed at actual costs.
- c) The Secretary may require a requester to remit payment prior to providing the requested confidential supervisory information.